

48A C.J.S. Judges § 338

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

E. Effect of Disqualification of Judge

§ 338. Effect of disqualification on official acts

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  56

Judicial acts in a cause by a disqualified judge involving the exercise of discretion constitute an error or irregularity subject to direct attack.

When a judge is disqualified, he or she is thereafter precluded from exercising discretion,¹ at least as to motions which had not been taken under submission before the application for change of judge was filed,² and his or her judicial act in the premises, involving the exercise of discretion, is an error or irregularity,³ impeachable by direct attack,⁴ as by seasonable motion in the tribunal itself,⁵ or as error on review.⁶ Under some authority, discretionary judicial acts by a disqualified judge are void.⁷ A successor judge may reconsider any prior factual or legal rulings by a disqualified judge.⁸

The subsequent approval or ratification by the qualified judge of the invalid acts of the disqualified judge has the effect of relieving the case of any objection to the proceedings based on the ground of the disqualification of the regular judge.⁹ An order of a judge made prior to his or her disqualification is in effect set aside by a similar order made by the new judge to whom the case is submitted after the original judge has stepped out of the case.¹⁰

An order of recusal does not absolve the court of jurisdiction for acts taken prior to recusal or result in making a previously entered oral order void.¹¹ However, it has been held that orders rendered after the filing of a justified motion for recusal of a judge must be vacated if the motion is ultimately granted.¹² A party which knew of grounds for recusal, but which did not move for recusal "until it found the atmosphere not to its liking," is bound by all court rulings rendered prior to recusal.¹³

Footnotes

- 1 Fla.—*Ross v. Ross*, 77 So. 3d 238 (Fla. 4th DCA 2012).
- Mo.—*Charron v. Missouri Bd. of Probation and Parole*, 373 S.W.3d 26 (Mo. Ct. App. W.D. 2012).
- 2 Mo.—*Charron v. Missouri Bd. of Probation and Parole*, 373 S.W.3d 26 (Mo. Ct. App. W.D. 2012).
- 3 Ky.—*Dotson v. Burchett*, 301 Ky. 28, 190 S.W.2d 697, 162 A.L.R. 636 (1945).
- N.M.—*Kavanaugh v. Delgado*, 1930-NMSC-066, 35 N.M. 141, 290 P. 798 (1930).
- Effect of disqualification on:
- Judgment see C.J.S., Judgments § 21.
- Ministerial acts, see § 336.
- 4 Ga.—*Faulkner v. Walker*, 36 Ga. App. 636, 137 S.E. 909 (1927).
- 5 Ga.—*Smith v. Queen Ins. Co. of America*, 41 Ga. App. 587, 153 S.E. 785 (1930).
- 6 U.S.—*In re Fox West Coast Theatres*, 25 F. Supp. 250 (S.D. Cal. 1936), order *aff'd*, 88 F.2d 212 (C.C.A. 9th Cir. 1937).
- Ky.—*Dotson v. Burchett*, 301 Ky. 28, 190 S.W.2d 697, 162 A.L.R. 636 (1945).
- 7 Tex.—*Freedom Communications, Inc. v. Coronado*, 372 S.W.3d 621 (Tex. 2012).
- Acts of judge as void or voidable, generally, see § 339.
- 8 Fla.—*Blackpool Associates, Ltd. v. SM-106, Ltd.*, 839 So. 2d 837 (Fla. 4th DCA 2003).
- 9 Neb.—*Rhodes v. Crites*, 173 Neb. 501, 113 N.W.2d 611 (1962).
- Or.—*Clatsop County v. Taylor*, 167 Or. 563, 119 P.2d 285 (1941).
- Tex.—*Hidalgo County Water Control and Imp. Dist. No. 1 v. Boysen*, 354 S.W.2d 420 (Tex. Civ. App. San Antonio 1962), writ refused, (May 23, 1962).
- 10 Ga.—*Garrison v. Marietta Trust & Banking Co.*, 155 Ga. 562, 118 S.E. 48 (1923).
- Ill.—*People v. Abraham*, 46 Ill. App. 3d 930, 5 Ill. Dec. 196, 361 N.E.2d 335 (3d Dist. 1977).
- Minn.—*In re Hormel's Trusts*, 282 Minn. 197, 163 N.W.2d 844 (1968).
- 11 Fla.—*Whack v. Seminole Memorial Hosp., Inc.*, 456 So. 2d 561 (Fla. 5th DCA 1984).
- 12 U.S.—*New York City Development Corp. v. Hart*, 796 F.2d 976 (7th Cir. 1986).
- 13 U.S.—*Sollenbarger v. Mountain States Tel. & Tel. Co.*, 706 F. Supp. 776 (D.N.M. 1989).